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FILED

08 MAR 10 PM 2:00

CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

DEPUTY

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

Sean Ngoc Vo,

Plaintiff,

v.

Condoleezza Rice,  
Secretary of State of the United States,

Kenneth J. Fairfax, Consul General  
Consulate General of the United States,  
Ho Chi Minh City, Vietnam

Jeffrey C. Schwenk, Consular Section Chief  
Consulate General of the United States,  
Ho Chi Minh City, Vietnam

Defendants.

Civil No.

'08 CV 444 J POR

Agency No. HCM2007641082

COMPLAINT FOR A WRIT  
IN THE NATURE OF MANDAMUS

Plaintiff, by his attorney, complaining of Defendants, alleges as follows:

1.) Plaintiff, Sean Ngoc Vo is an individual and petitioner for a fiancé visa who resides within the jurisdiction of this Court. Plaintiff's claim to relief arises under 8 U.S.C. § 1184(d).

2.) Defendant Condoleezza Rice is the Secretary of State of the United States and is sued herein in her official capacity. Defendant Rice is responsible for the administration of the Immigration and Nationality Act as it relates to American consular officers. 8 U.S.C. § 1104. Her rulings on matters of law are binding on American consular officers.

1 22 C.F.R. § 41.121(d). Kenneth J. Fairfax is the Consul General assigned to the  
2 Consulate General of the United States in Ho Chi Minh City, Vietnam, and Jeffrey C.  
3 Schwenk is the Consular Section Chief at the same place, both under the jurisdiction of  
4 Defendant Rice. These defendants are also sued in their official capacities. Plaintiff  
5 alleges, on information and belief, that all Defendants have a role in the visa issuance  
6 process as relates herein.

7  
8 3.) The Court has jurisdiction of this action pursuant to 28 U.S.C. § 1331, 28 U.S.C. §  
9 1361, 28 U.S.C. § 1651, 28 U.S.C. § 2201 and 5 U.S.C. § 701 et seq., and relief is  
10 requested pursuant to these statutes.

11  
12 4.) On March 31, 2006, Plaintiff petitioned for K-1 visa status on behalf of his fiancé,  
13 Phuc T. Le, pursuant to 8 U.S.C. § 1184(d) with the USCIS California Service Center in  
14 Laguna Niguel, California. The USCIS Receipt Number assigned to this case is: WAC-  
15 06-140-50106 [A099 442 127]. After a long delay, and the filing of a mandamus  
16 complaint against the Department of Homeland Security, which was later dismissed  
17 without prejudice, the petition was approved on June 26, 2007.

18  
19 5.) On or about September 6, 2007, Ms. Phuc T. Le, the beneficiary of the petition, was  
20 interviewed at the Consulate. At the interview the consular officer requested the birth  
21 certificates of Ms. Le's parents and of Mr. Vo's parents. On or about September 20, 2007,  
22 Ms. Le submitted all of the requested papers to the Consulate.

23  
24 6.) Between September 20, 2007 and the present, Ms. Le has called the Consulate  
25 numerous times. The Consulate has consistently refused to provide any estimate as to  
26 when the visa application may be adjudicated.

27  
28 7.) On or about December 7, 2007, and February 19, 2008, Mr. Vo called the Consulate.  
On February 19, he spoke with Officer 67. Both times, the Consulate refused to provide

1 any estimate as to when the visa application may be adjudicated.

2 8.) On November 29, 2007, December 17, 2007, January 31, 2008, February 11, 2008,  
3 and February 20, 2008, Attorney Robert Nadalin submitted e-mail inquiries as well as an  
4 inquiry sent via Federal Express to inquire as to the status of the pending visa application  
5 pursuant to a request that the case be completed as soon as possible. The Consulate has  
6 consistently refused to take any action on the pending visa application or to provide any  
7 estimate as to when the visa application may be adjudicated.  
8

9 9.) The State Department maintains a website listing estimated visa processing dates. As  
10 of March 10, 2008, the processing date for all visas was listed as one day. This website  
11 does contain a note marked by three asterisks to note that the stated processing time does  
12 not include estimates for fiancé visa (K-visa) processing. It is not clear as to why the  
13 Consulate can adjudicate all other visa applications in one day but has not been able to  
14 adjudicate the visa application of Ms. Le more than 6 months after the date of her in-  
15 person interview.  
16

17 10.) The petitioner and beneficiary have now waited almost two years for the completion  
18 of the fiancé visa process. The Consulate's refusal to adjudicate the case or to provide any  
19 kind of estimation as to when it may reasonably be expected to be adjudicated is as a  
20 matter of law, arbitrary and not in accordance with the law, and violates standards of  
21 fundamental fairness by providing no further notice of when the case may be completed.  
22 The delay in the adjudication of this matter is unreasonable as it makes it impossible for  
23 Mr. Vo and Ms. Le to know when, if ever, they may be allowed to marry in the U.S. This  
24 impacts their ability to plan for an array of matters of great personal importance including  
25 starting a family, career planning, and establishing a joint residence.  
26

27 11.) Defendants have a duty to adjudicate this application. Id.  
28

1 12.) Plaintiff has exhausted his administrative remedies.

2 13.) Defendants' refusal to act in this case is, as a matter of law, arbitrary and not in  
3 accordance with the law.

4 14.) Defendants are in violation of the Administrative Procedures Act, 5 U.S.C. § 701 et.  
5 seq., are unlawfully withholding or unreasonably delaying action on Plaintiff's application  
6 and have failed to carry out the adjudicative functions delegated to them by law with  
7 regard to Plaintiff's case.

8 WHEREFORE, Plaintiff prays:

9 A. That the Defendants be ordered to have their agents process this case to a conclusion.

10 B. For reasonable attorney's fees and

11 C. For such other and further relief as to this court may seem proper.  
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15 Dated: March 10, 2008

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17 Robert G. Nadalin  
18 Attorney for Sean Ngoc Vo  
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**UNITED STATES  
DISTRICT COURT**  
SOUTHERN DISTRICT OF CALIFORNIA  
SAN DIEGO DIVISION

# 148592 - SH  
\* \* C O P Y \* \*  
March 10, 2008  
15:03:50

**Civ Fil Non-Pris**

USAO #: 08CV0444  
Judge.: NAPOLEON A JONES, JR  
Amount.: \$350.00 CK  
Check#: BC203

**Total-> \$350.00**

FROM: VO V. SEC OF STATE

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## I. (a) PLAINTIFFS

Sean Ngoc Vo

(b) County of Residence of First Listed Plaintiff San Diego

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Robert G. Nadalin, The Law Offices of Robert Nadalin, P.O. Box 124594, San Diego, CA 92112. Tel. 619-234-8875

## DEFENDANTS

Condoleezza Rice, Secretary of State of the United States, Kenneth J. Fairfax, Consul General, Consulate General of the United States, Ho Chi Minh City, Vietnam, Jeffrey C. Schwenk, Consular Section Chief, Consulate General of the United States, Ho Chi Minh City, Vietnam

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

DEPUTY

'08 CV 444 J POR

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State ☐ 1 PTF ☐ 1 DEF
- Citizen of Another State ☐ 2 PTF ☐ 2 DEF
- Citizen or Subject of a Foreign Country ☐ 3 PTF ☐ 3 DEF
- Incorporated or Principal Place of Business In This State ☐ 4 PTF ☐ 4 DEF
- Incorporated and Principal Place of Business In Another State ☐ 5 PTF ☐ 5 DEF
- Foreign Nation ☐ 6 PTF ☐ 6 DEF

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>SOCIAL SECURITY</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609
				<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

## V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing. (Do not cite jurisdictional statutes unless diversity):  
8 USC 1184(d), 28 USC 1331, 28 USC 1361Brief description of cause:  
Action in mandamus to compel administrative action

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

## VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

3/10/2008

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

81 3/10/08